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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID WILLIAM ERHARDT,

Defendant and Appellant.

F077996

(Super. Ct. No. F15905822)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Jon N. Kapetan, Judge.

William D. Farber, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Franson, Acting P.J., Smith, J. and DeSantos, J.

PROCEDURAL BACKGROUND

On August 26, 2015, appellant, David William Erhardt, was charged with obtaining money, labor, or property by false pretenses, a felony violation of Penal Code section 532, subdivision (a)¹ (count 1); forgery, a felony violation of section 470, subdivision (a) (count 2); possession of forged government identification, a felony violation of section 470b (count 3); misdemeanor driving under the influence of a drug in violation of Vehicle Code section 23152, subdivision (e) (count 4); misdemeanor possession of an injection or ingestion device in violation of Health and Safety Code section 11364 (count 5); and misdemeanor providing false information to a police officer in violation of Vehicle Code section 31 (count 6).

In a negotiated disposition on March 28, 2016, Erhardt entered no contest pleas to counts 1, 3, and 4. In exchange, Erhardt was promised no state prison, a grant of probation, referral to a residential treatment program, and dismissal of remaining counts 2, 5, and 6.

Before pleading no contest to counts 1, 3, and 4, Erhardt was orally advised of, and he waived, his constitutional rights to a preliminary hearing, to trial by jury, to confront and cross-examine witnesses, to subpoena witnesses for his defense and to testify in his own defense, and his privilege against self-incrimination. Erhardt also signed felony and misdemeanor plea forms, containing these same waivers, that were filed in open court. Erhardt stipulated to a factual basis for his pleas pursuant to *People v. West* (1970) 3 Cal.3d 595 (*West*). Erhardt's trial counsel joined in the waiver of his rights, concurred in his pleas, and stipulated to a factual basis based on the police reports and pursuant to *West*. Finding a factual basis for Erhardt's pleas based on *West*, the trial

¹ All further statutory references are to the Penal Code unless noted otherwise.

court accepted the pleas and found Erhardt guilty on counts 1, 3, and 4. After accepting Erhardt's pleas, the trial court dismissed remaining counts 2, 5, and 6.

On April 25, 2016, the trial court suspended imposition of sentence on counts 1, 3, and 4 and placed Erhardt on formal probation for two years under various terms and conditions, including enrollment and participation in an alcohol and narcotics program and 365 days in the county jail. The trial court imposed a \$900 restitution fine pursuant to section 1202.4, subdivision (b) and imposed, but suspended, a probation revocation fine in an equal amount pursuant to section 1202.44. The trial court imposed a \$40 court operations fee pursuant to section 1465.8, subdivision (a)(1) and a \$30 criminal conviction assessment pursuant to Government Code section 70373. The trial court awarded Erhardt actual credit of 55 days and conduct credit of 54 days for a total of 109 days of presentence custody credit.

On January 5, 2017, a petition for revocation of probation was filed in this case alleging three probation violations: (1) out of contact with probation since August 7, 2016; (2) leaving, and termination from, his residential substance abuse treatment program on August 7, 2016; and (3) failure to report a change of address after October 21, 2016. The trial court revoked Erhardt's probation and issued a bench warrant for his arrest on the same date.

On May 23, 2018, Erhardt was arrested on outstanding warrants in this case and for other unrelated felonies, including superior court case No. F18903153 (case No. 3153). Erhardt's probation was formally revoked on May 25, 2018.

On June 18, 2018, a probation revocation hearing was held, and a fourth "obey all laws" probation violation was additionally alleged in respect to unrelated case No. 3153. At that hearing, the parties stipulated that Erhardt's misdemeanor plea and conviction in violation of section 460, subdivision (b) in case No. 3153, which occurred on the same date as the probation violation proceedings in the present case, could be used as the basis for finding that Erhardt also violated probation for failing to obey all laws. The trial

court ordered probation to remain revoked. Declining to reinstate probation, the trial court terminated Erhardt's probation.

On Erhardt's waiver of time and at his request for immediate sentencing, the trial court thereupon sentenced Erhardt on count 1 in violation of section 532, subdivision (a) to the middle term of two years in local prison and on count 3 in violation of section 470b to a concurrent middle term of two years in local prison. The trial court sentenced Erhardt to 292 days in county jail on misdemeanor count 4 in violation of Vehicle Code section 23152, subdivision (e).² The trial court imposed a \$900 restitution fine and ordered Erhardt to pay the previously imposed \$900 probation revocation fine pursuant to section 1202.44. The trial court imposed a \$40 court operations fee and a \$30 criminal conviction assessment. The trial court awarded Erhardt actual credit of 146 days actual credit and conduct credit of 146 days of local conduct credit for a total of 292 days of presentence custody credit pursuant to section 4019.3

On December 19, 2018, in response to Erhardt's November 28, 2018 request pursuant to Penal Code section 1237.1, the trial court amended the sentencing minutes and abstract of judgment to reflect the award of 147 days of actual credit and a total of 293 days of presentence custody credit.

On August 16, 2018, Erhardt filed a timely appeal. On August 27, 2018, the trial court granted Erhardt's request for a certificate of probable.

STATEMENT OF FACTS

Underlying Counts 1, 3, and 4

According to a California Highway Patrol (CHP) crime report, an enforcement stop was made on a U-Haul truck driven by Erhardt on the afternoon of May 8, 2015, on State Route 99 in Fresno County. Before being stopped, the truck driven by Erhardt

² In December 2018, the trial court amended the sentencing minutes to reflect a sentence of 180 days in county jail on count 4.

changed lanes into the path of another vehicle, accelerated in the center divider of a traffic lane, crossed and straddled lanes of traffic, and left the freeway on the shoulder of the off-ramp. When approached by the CHP officer during the traffic stop, Erhardt held the steering wheel very tightly, stared forward with a “zombie-like” gaze, and was slow and lethargic in response to the CHP officer’s commands. When the officer instructed Erhardt to put the vehicle in park, he applied the brakes. Erhardt provided the officer with a counterfeit driver’s license in the name of “Danny Bernard Williams.” Erhardt told the officer that “Danny Bernard Williams” was his name. When Erhardt opened his wallet, the officer observed another driver’s license with Erhardt’s true name, which had been suspended. Inside the truck, the officer located a container with four Clonazepam (2 mg.) tablets with the name David E., a baggie containing eight syringes and open balloons with an unusable amount of heroin, and a broken spoon with burnt brown residue. Erhardt told the CHP officer he had taken a 2 mg. Clonazepam tablet about four hours prior to the stop.

The U-Haul company was notified of the stop, and a company employee was sent to retrieve the truck. The U-Haul employee informed the officer that Erhardt rented the U-Haul truck in Fresno on April 28, 2015, but failed to return the truck on the return date of April 29, 2015. The U-Haul employee advised the officer that Erhardt rented the truck under the name of “Danny Bernard Williams.” U-Haul was unable to contact or locate Erhardt regarding the return of its truck as the telephone number provided by Erhardt was a non-working number. The U-Haul employee advised the CHP officer that the company would not have rented its truck to Erhardt had it known he used a fake driver’s license.

Erhardt was arrested for, inter alia, driving under the influence. He was transported to the Fresno County Jail. Blood drawn from Erhardt after his arrest testified positive for methamphetamine, morphine, and codeine.

Probation Violation

Among the conditions of probation in this case, appellant was ordered to obey all laws. On May 23, 2018, appellant was arrested on outstanding warrants in, among others, case No. 3153 and charged with a felony violation of section 487, subdivision (f). In a negotiated disposition in case No. 3153 on June 18, 2018, in conjunction with the probation violation and revocation proceedings in the present case, appellant pleaded no contest to a misdemeanor violation of section 460, subdivision (b). At the probation violation proceedings on the same date, appellant stipulated that his no contest plea and conviction in violation of section 460, subdivision (b) in case No. 3153 could be used as the basis for finding him in violation of probation for failing to obey all laws.

APPELLATE COURT REVIEW

Erhardt's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that Erhardt was advised he could file his own brief with this court. By letter on January 16, 2019, we invited Erhardt to submit additional briefing. To date, he has not done so.

After independent review of the record, including the clerk's and reporter's transcripts and appellant's request for certificate of probable cause, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.